Local Government Mandate Statement Kentucky Legislative Research Commission 2023 Regular Session

Part I: Measure Information

Bill Request #: 1264
Bill #: SB 228 SCS 1
Document ID #: 5785
Bill Subject/Title: AN ACT relating to driving under the influence of marijuana.
Sponsor: Senator Johnnie Turner
Unit of Government: X City X County X Urban-County Unified Local
X Charter County X Consolidated Local X Government
Office(s) Impacted: Law Enforcement, Jails
Requirement: X Mandatory Optional
Effect on Powers & Duties: X Modifies Existing Adds New Eliminates Existing

Part II: Bill Provisions and the Estimated Fiscal Impact Relating to Local Government

Section 1 amends KRS 189A.005 to define "Marijuana concentration" to mean nanograms of tetrahydrocannabinol per milliliter of blood.

Section 2 amends KRS 189A.010 to prohibit the operation of a motor vehicle for persons having a marijuana concentration of 5 or more as measured by a scientifically reliable test or tests of a sample of the person's breath or blood taken within 2 hours of cessation of operation or physical control of a motor vehicle.

In any prosecution for a violation of operating a motor vehicle while under the influence of marijuana, the following presumptions shall be made depending on marijuana concentration of the defendant's blood:

- If there was a marijuana concentration of less than 4, it shall be presumed that the defendant was not under the influence of marijuana
- If there was a marijuana concentration of 4 or greater but less than 5, the fact shall not constitute a presumption that the defendant was or was not under the influence

of marijuana, but that fact may be considered along with other evidence in determining the defendant's guilt or innocence.

Section 3 through Section 7 provide conforming language and apply the same penalties to marijuana concentration violations that apply to other driving while intoxicated offenses. For the first offense an offender may be imprisoned in a county jail for between 48 hours and 30 days. For a second offense within a ten year period an offender shall be imprisoned in a county jail for between 7 days and 6 months. For a third offense the offender may be imprisoned in a county jail for 30 days to 12 months. A fourth offence or subsequent offenses constitute a Class D Felony.

The expected fiscal impact of SB 228 SCS 1 is undeterminable because the number of expected offenders cannot be estimated. According to the Kentucky State Police, blood tests are already utilized to determine marijuana concentration and therefore no new costs would be expected.

There may be costs associated with any additional arrests or convictions that result from SB 228 SCS 1. Misdemeanants are housed in one of Kentucky's 74 full service jails or three life safety jails. While the expense of housing inmates varies by jail, this estimated impact will be based on an average cost to incarcerate of \$40.11 per day. While the majority of misdemeanor defendants are granted bail, those who do are not will also cost local jails an average cost to incarcerate of \$40.11 per day.

When a court denies bail to a Class D felony defendant, the local government is responsible for incarcerating the defendant until disposition of the case in one of Kentucky's 74 full- service jails or three life safety jails. While the expense of housing inmates varies by jail, each additional inmate increases facility costs by an average cost to incarcerate of \$40.11 per day to incarcerate, which includes the \$35.34 per diem and medical expenses that the Department of Corrections pays jails to house felony offenders. Upon sentencing, a Class D felon is housed in one of Kentucky's full- service jails for the duration of his or her sentence. The Department of Corrections pays a jail \$35.34 per day to house a Class D felon. The per diem may be less than, equal to, or greater than the actual housing cost.

Part III: Differences to Local Government Mandate Statement from Prior Versions

Part II refers to SB 228 SCS 1 which added provisions to **Section 2** of SB 228 to describe how marijuana concentrations of less than 5 shall be interpreted during any prosecution of a defendant accused of driving under the influence of marijuana.

Data Source(s): LRC Staff, Kentucky State Police

Preparer: Jacob Blevins (WB) **Reviewer:** KHC **Date:** 3/10/23